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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3823 OF 2007

Faijjal Abdul Khan .. Applicant

V/s

1. State of Maharashtra
2. Administrative Manager, Citibank .. Respondents

Mr.A.P. Mundargi i/b Mr.Amol Patankar for the applicant.

Mr.Rajesh More, A.P.P. for the State.

Mr.Mahesh Menon for the respondent no.2.

CORAM : D.G. KARNIK, J.

DATE : 5TH DECEMBER 2007

P.C. :

1. Heard the learned counsel for the petitioner, the respondent no.2 - original complainant and the learned A.P.P. for the State.

2. The facts in brief are as under:-

. The applicant in his capacity as power of attorney holder of his parents executed an agreement of sale of their flat in favour of Mr. and Mrs. Sonawalla

for a consideration of Rs.80 lakhs. Mr. & Mrs. Sonawalla borrowed Rs.55 lakhs from Citibank and paid it to the applicant. However, the balance consideration was not paid and therefore the agreement was terminated by the applicant. Thereafter, it appears that the purchasers Sonawallas are not traceable. The respondent no.2 bank, therefore, filed a complaint with the police and an offence has been registered against Mr. & Mrs. Sonawalla. The applicant was arrested on the allegation that he is a party to the fraud committed by Mr. & Mrs. Sonawalla.

3. On the applicant's application made to the Sessions Court, the learned Sessions Judge held that the applicant is entitled to bail. He however imposed a condition that the applicant shall pay a sum of Rs.55 lakhs to the Citibank towards the loan of Mr. & Mrs.Sonawalla. Being aggrieved by the said condition, the applicant has approached this court for bail without such condition.

4. In para 5 of the order, the learned Sessions Judge has rightly observed that the Sessions Court is not a recovery agent for the loan advanced by the Citibank - the respondent no.2. Having held so, in my view, the Sessions Court erred by imposing condition of repayment of Rs.55 lakhs by the applicant. The

applicant is not the borrower. He has no contractual relationship with the respondent no.2.

5. I have perused the FIR lodged by the consultant of the respondent no.2 bank. The allegations therein are of the cheating committed by Mr. & Mrs. Sonawalla. Of course, there is a vague allegation that the applicant has abetted the offence. However, there is no material on record to show that the applicant has in any manner abetted the said offence. In fact, the applicant claims that he has been deceived by Mr. & Mrs. Sonawalla who have not paid the balance consideration to him.

6. In the circumstances, taking an overall view of the matter, I am of the view that the applicant is entitled to bail without the condition of deposit of Rs.55 lakhs. In order to show the bona fide, the applicant has already deposited a sum of Rs.5 lakhs in this Court. The said amount shall remain as a cash security for the bail. In the circumstances, I pass the following order:-

ORDER

(a) The applicant is granted bail on executing a personal bond in the sum of Rs.5 lakhs and furnishing a cash security of Rs.5 lakhs. The amount of Rs.5 lakhs

deposited in this Court shall be treated as cash security, in addition to the personal bond to be executed by the applicant. In view of cash security furnished as above, it would not be necessary to furnish any further security.

(b) The amount of Rs.5 lakhs deposited by the applicant be invested in a nationalised bank initially for a period of 13 months to be renewed from time to time till the decision of the Sessions Court. The security amount shall be subject to the orders that may be passed by the Sessions Court at the trial.

(c) Application is disposed of.

(D.G. KARNIK, J.)